IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 10041 OF 2004
WITH
CIVIL APPLICATION NO.1482 OF 2005.

Krishna Shrihari Vadane .. Petitioner.
V/s
Sou. Malanbai Jyotiram Chandge
And 7 Others. ... Respondents.

Shri Ashok Tajane i/b Shri G.S. Godbole for the petitioner

Shri Surel S. Shah for Respondent Nos. 1,2,4 to 8.

CORAM : S.B. MHASE, J.
DATE : 18TH APRIL, 2006.

P.C.

. The learned Counsel for the petitioner on instructions states that he may be allowed to withdraw the petition.

2. Petition is allowed to be withdrawn.

[S.B. MHASE, J.]

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. In view of withdrawal of Writ Petition No. 10041 of 2004, this civil application is disposed of.

[S.B. MHASE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 144 OF 2006

Shri Tukaram Baliram Vadane ... Petitioner
V/s
Shri Krishna Shrihari Vadne and others. ...Respondents.

Shri Dilip Bodake for the Petitioner

Shri Ashok Tajane i/b Shri G.S. Godbole for respondent No.1.

Ms. V.S. Mhaispurkar,AGP for respondent No.9.

CORAM : S.B. MHASE, J.
DATE : 18TH APRIL, 2006.

P.C.

. The order dated 17th August, 2005 passed by the Deputy Director of Land Record and Jt. Settlement Commissioner, Maharashtra, Pune, bearing No. Amlg/1/WS/1017/05 is under challenge. The Reg. Civil Suit No. 222/1991 has been filed by the respondent No.1 as against the petitioner and the respondents 6 to 9. In that suit the issue was framed in respect of Consolidation Scheme. The issue was to the effect

"whether Consolidation Scheme in respect of Gut No. 200 of village Pangare i.e. consolidation scheme in respect of lands of Ganpat, Dashrath, Maruti Genu Vadne is defective. The said issue has arisen in civil proceeding and therefore in view of the provisions of Section 36 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 there is a bar for the civil Court to adjudicate and decide the said issue. However Section 36(b) of the said Act has provided that whenever such issue arises in a civil proceedings, which is required to be decided or dealt with by any authority competent to settle, decide or deal with such issues under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the Civil Court or Mamletdar's Court shall stay the suit and refer such issues to such competent authority for decision. Sub-section (2) of this section further provides that on receipt of such reference from the Civil Court or Mamlatdar's Courts, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamladtar's Court and such Court shall thereupon, dispose of the suit in accordance with the procedure thereto. In view of this

provision, the Court by order dated 7/10/2004 passed below Exh. 72 in the said suit referred the said issue to the Deputy Director of Land Records and Jt. Settlement Commissioner, Pune for decision in accordance with the law. The said reference has been answered by the Deputy Director of Land Records and Jt. Settlement Commissioner (M.S.), Pune by the above order dated 17th August 2000. This order is assailed in this petition only on one ground namely the Deputy Director of Land Records and Jt. Settlement Commissioner (M.S.), Pune decided the said issue and a reference without giving hearing to the parties. There is no dispute on this aspect. Both the Counsel appearing for the respective parties have submitted before this Court that the impugned order has been passed by the Deputy Director of Land Records and Jt. Settlement Commissioner, Pune without hearing the parties and without allowing the parties to lead evidence in support or against the said issue. In fact, the issue being referred under Section 36(b), the Competent Authority under the said Act is under an obligation to hear the parties and after giving an opportunity to lead and/or place on record the evidence in support of their contentions raised in respect of the consolidation scheme as a result of which

the issue has been referred. Since the issue has been answered without giving an opportunity to both the sides, the order suffers a procedural draw back viz opportunity to lead evidence and opportunity of hearing was not offered to the parties before the issue is answered.

2. Without going into the merits of the issue it is found that the order is bad and required to be set aside. Therefore, in view of the consent given by both the Counsel, the order dated 17th August, 2005 passed by the Deputy Director Land Records and Jt. Settlement Commissioner (M.S.), Pune is hereby quashed and set aside.

3. The said authority is hereby directed to decide the issue referred by the Civil Court after giving appropriate hearing opportunity and allowing the parties to lead evidence in support of their respective contentions. The authority shall pass reasoned order while recording finding on issue.

[S.B. MHASE, J.]